

# EXHIBIT 12

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

IN RE PACIFIC FERTILITY CENTER )  
 LITIGATION ) No. 3:18-cv-01586-JSC  
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REMOTE AND VIDEOTAPED DEPOSITION OF JEAN  
 POPWELL, Ph.D., taken in California, at 12:34,  
 p.m., Wednesday, September 2, 2020, before  
 Theresa JoAnn Phillips-Blackwell, CSR 12700.



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19 Also Present: Philip Knowles and Simon Knowles,  
20 videographers/technicians  
(Both Appearing via Zoom)  
21  
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04:04 1 Q. Do you -- do you have a memory of what it  
04:04 2 sounds like when the fill cycle is complete?

04:04 3 MR. TARANTINO: Objection. Assumes facts.

04:04 4 THE WITNESS: There's silence. I mean...

04:04 5 BY MR. DUFFY:

04:04 6 Q. Okay. So you stop -- you stop hearing the flow  
04:04 7 of liquid nitrogen and the bubbling inside Tank 4?  
04:04 8 That's how you know?

04:04 9 MR. TARANTINO: Objection. Assumes facts.  
04:04 10 Mischaracterizes testimony. Speculation.

04:04 11 THE WITNESS: There is no more sound being  
04:04 12 emitted from the tank, so...

04:04 13 BY MR. DUFFY:

04:04 14 Q. So silence is how you know the fill cycle's  
04:05 15 over?

04:05 16 A. Yes.

04:05 17 Q. Do you stand next to the freezer the whole time  
04:05 18 a fill cycle is being completed?

04:05 19 A. No.

04:05 20 Q. Did you stand next to the freezer on March 2  
04:05 21 and observe and listen to the fill cycle for the entire  
04:05 22 time?

04:05 23 A. No.

04:05 24 Q. On March 2 did you see moisture on the outside  
04:05 25 of Tank 4?

04:05 1 A. No.

04:05 2 Q. On March 2 did you see ice outside -- on the  
04:05 3 outside of Tank 4?

04:05 4 A. No.

04:05 5 Q. On March 2 did you see moisture on the floor  
04:05 6 adjacent to or under Tank 4?

04:05 7 A. No.

04:05 8 Q. On March 2 did you see any deformations inside  
04:05 9 Tank 4?

04:05 10 A. No.

04:05 11 Q. The next measurement I have associated with --  
04:06 12 with you is for March 3 of 2018. Do you see that?

04:06 13 A. Yes.

04:06 14 Q. And what was the measurement that you had that  
04:06 15 day?

04:06 16 A. Fourteen.

04:06 17 Q. And it's associated with your name here in  
04:06 18 Exhibit 211; is that right?

04:06 19 A. Yes.

04:06 20 Q. Do you have a personal memory of making the  
04:06 21 LN-2 measurement for Tank 4 on March 3, 2018?

04:06 22 A. Yes.

04:06 23 Q. Tell me what your personal memory is of  
04:06 24 measuring the LN-2 in Tank 4 on March 3.

04:06 25 A. Repeating the same thing I had done the

04:06 1 previous day.

04:06 2 Q. And please tell me, what you do remember of --  
04:06 3 of you measuring the LN-2 in Tank 4 on -- on Saturday,  
04:06 4 March 3?

04:07 5 A. Pressing the auto-fill button on the  
04:07 6 controller, filling Tank 4, measuring it with the  
04:07 7 dipstick, and then entering the value into Reflections.

04:07 8 Q. And the -- the value that you entered was  
04:07 9 14 inches; correct?

04:07 10 A. Yes.

04:07 11 Q. So for all six of the measurements that you did  
04:07 12 for Tank 4 in February and March, you have the exact  
04:07 13 same measurement; correct?

04:07 14 A. Correct.

04:07 15 Q. Can you explain how it is that you got the  
04:07 16 exact same measurement for all six days?

04:07 17 MR. TARANTINO: Objection. Lacks foundation.  
04:07 18 Calls for speculation.

04:07 19 THE WITNESS: I filled it to a part of the  
04:07 20 yardstick that was -- I know was adequate level of  
04:07 21 liquid nitrogen, and so that's just the target I chose.  
04:07 22 BY MR. DUFFY:

04:07 23 Q. Did you intend for it to hit the 14 inches?

04:07 24 A. I intended to hit the 14 inches.

04:08 25 Q. And so you brought it to that level by design?



04:08 1 A. Yes.

04:08 2 Q. And then you measured it and got it to  
04:08 3 14 inches all -- all 6 times; correct?

04:08 4 A. That was my target for filling the tank.

04:08 5 Q. Sure. How would you know whether you filled it  
04:08 6 to 14 inches without measuring it?

04:08 7 A. Are you referring to any tank, or are you  
04:08 8 referring to Tank 4 at the time of -- which time period  
04:08 9 are you referring to?

04:08 10 Q. Yeah. Sure. Let me -- let me try that  
04:08 11 question again.

04:08 12 Your goal, obviously, for Tank 4 here in this  
04:08 13 period of February and March was to get it to 14 inches;  
04:08 14 correct?

04:08 15 THE WITNESS: Yes.

04:08 16 MR. TARANTINO: Objection. Misstates  
04:08 17 testimony.

04:08 18 BY MR. DUFFY:

04:08 19 Q. And you -- sorry.

04:08 20 And you achieved that goal all six times that  
04:08 21 you measured the freezer in February and March; correct?

04:09 22 MR. TARANTINO: Objection. Mischaracterizes  
04:09 23 testimony.

04:09 24 Go ahead.

04:09 25 THE WITNESS: That was my goal to reach.

04:09 1 BY MR. DUFFY:

04:09 2 Q. And -- and you met it all six times in February  
04:09 3 and March; correct?

04:09 4 A. According to this document, yes.

04:09 5 Q. And if your goal was 14 inches, how did you go  
04:09 6 about making sure that when you were initiating those  
04:09 7 fill cycles that it would get to 14 inches?

04:09 8 A. I would measure with a dipstick as it was  
04:09 9 filling and continue to let it fill.

04:09 10 Q. Okay. So as it was filling, you would  
04:09 11 occasionally come over and put the dipstick in and check  
04:09 12 how -- how it was coming?

04:09 13 A. Yes. I measured as it was filling to make sure  
04:09 14 that I got to a level in which I felt was appropriate.

04:10 15 Q. On March 3 of 2018 do you recall how long it  
04:10 16 took for the liquid nitrogen to reach 14 inches using  
04:10 17 the controller fill cycle that you initiated?

04:10 18 A. I do not recall.

04:10 19 Q. If it was more than 30 minutes, would it  
04:10 20 surprise you?

04:10 21 A. I do not -- I do not know the fill time for  
04:10 22 these tanks. I do not recall.

04:10 23 Q. I understand that. But would it surprise you  
04:10 24 if the fill time was longer than 30 minutes?

04:10 25 MR. TARANTINO: Objection. Incomplete

04:10 1 hypothetical.

04:10 2 THE WITNESS: The fill time should be less than  
04:10 3 an hour.

04:10 4 BY MR. DUFFY:

04:10 5 Q. Okay. So -- so a fill time on March 3rd should  
04:11 6 have been less than an hour; correct?

04:11 7 A. Yes.

04:11 8 Q. And if it was more than an hour, that would  
04:11 9 surprise you; correct?

04:11 10 MR. TARANTINO: Objection. Incomplete  
04:11 11 hypothetical. Speculation.

04:11 12 THE WITNESS: I would think a tank would fill  
04:11 13 in less than an hour, yes.

04:11 14 BY MR. DUFFY:

04:11 15 Q. Okay. And it would surprise you if it took  
04:11 16 longer; correct?

04:11 17 MR. TARANTINO: Same objections. Speculation.  
04:11 18 Incomplete hypothetical.

04:11 19 DEPOSITION OFFICER: I'm sorry. Repeat your  
04:11 20 objection.

04:11 21 THE WITNESS: Yes. Possibly.

04:11 22 BY MR. DUFFY:

04:11 23 Q. And if it took as long as two hours to complete  
04:11 24 that fill cycle on March 3rd, you would have done  
04:11 25 something more than just close the freezer and leave it

DEPOSITION OFFICER'S CERTIFICATE

STATE OF CALIFORNIA            }  
  }  
COUNTY OF LOS ANGELES       }

ss.

I, THERESA JOANN PHILLIPS-BLACKWELL, hereby  
certify:

I am a duly qualified Certified Shorthand  
Reporter in the State of California, holder of  
Certificate Number CSR 12700 issued by the Court  
Reporters Board of California and which is in full force  
and effect. (Fed. R Civ. P. 28(a)).

I am authorized to administer oaths or  
affirmations pursuant to California Code of Civil  
Procedure, Section 2093(b) and prior to being examined,  
the witness was first duly sworn by me. (Fed. R. Civ.  
P. 28(a), 30(f)(1)).

I am not a relative or employee or attorney or  
counsel of any of the parties, nor am I a relative or of  
such attorney or counsel, nor am I financially  
interested in this action. (Fed. R. Civ. P. 28).

I am the deposition officer that  
stenographically recorded the testimony in the foregoing  
deposition and the foregoing transcript is a true record

///

1 of the testimony given by the witness. (Fed. R. Civ. P.  
2 30(f)(1)).

3 Before Completion of the deposition, review of  
4 the transcript { } was {xx} was not requested. If  
5 requested, any changes made by the deponent (and  
6 provided to the reporter) during the period allowed, are  
7 appended hereto. (Fed. R. Civ. P. 30(e)).

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9 Dated: September 21, 2020

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